TRANSMITTAL FORM

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Application Number	09/488,471
Filing Date	01/20/2000
First Named Inventor	SUNDARESAN, Neelakantan
Art Unit	2172
Examiner Name	Hung Q. Pham
Attorney Docket Number	AM9-99-0201

Total Number of Pages in This Submission

ENCLOSURES   *(Check all that apply)*

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- [ ] Information Disclosure Statement
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- [ ] Reply to Missing Parts/ Incomplete Application
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- [ ] Drawing(s)
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- [ ] Petition
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- [ ] After Allowance Communication to TC
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Firm Name	Samuel A. Kassatly, Law Office
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Date	03/11/2004

Effective on 12/08/2004. *Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).* **FEE TRANSMITTAL For FY 2005**	**Complete if Known**	
	Application Number	09/488,471
	Filing Date	01/20/2000
	First Named Inventor	SUNDARESAN, Neelakantan
☐ Applicant claims small entity status. See 37 CFR 1.27	Examiner Name	Hung Q. Pham
	Art Unit	2172
TOTAL AMOUNT OF PAYMENT ($) 0	Attorney Docket No.	AM9-99-0201

METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____

☑ Deposit Account   Deposit Account Number: 09-0441   Deposit Account Name: International Business Machines

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

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FEE CALCULATION

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

	FILING FEES		SEARCH FEES		EXAMINATION FEES		
Application Type	**Fee ($)**	**Small Entity Fee ($)**	**Fee ($)**	**Small Entity Fee ($)**	**Fee ($)**	**Small Entity Fee ($)**	**Fees Paid ($)**
Utility	300	150	500	250	200	100	0
Design	200	100	100	50	130	65	0
Plant	200	100	300	150	160	80	0
Reissue	300	150	500	250	600	300	0
Provisional	200	100	0	0	0	0	0

2. EXCESS CLAIM FEES

Fee Description	Fee ($)	Small Entity Fee ($)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180

Total Claims	Extra Claims	Fee ($)	Fee Paid ($)
_____ - 20 or HP = _____	x _____	=	0

HP = highest number of total claims paid for, if greater than 20.

Multiple Dependent Claims

Fee ($)	Fee Paid ($)
0	

Indep. Claims	Extra Claims	Fee ($)	Fee Paid ($)
_____ - 3 or HP = _____	x _____	=	0

HP = highest number of independent claims paid for, if greater than 3.

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is $250 ($125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee ($)	Fee Paid ($)
_____ - 100 =	_____ / 50 =	_____ (round **up** to a whole number) x	_____ =	0

4. OTHER FEE(S)

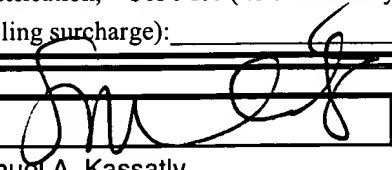|	Fees Paid ($)
Non-English Specification, $130 fee (no small entity discount)	0
Other (e.g., late filing surcharge): _____	0

SUBMITTED BY

Signature		Registration No. (Attorney/Agent) 32247	Telephone 408-323-5111
Name (Print/Type)	Samuel A. Kassatly		Date 03/11/2004

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Title:	"System and Method for Integrating Off-Line User Ratings of Businesses with Search Engines"

Applicant(s): SUNDARESAN, Neelakantan

Attorney Docket No.: AM9-99-0201

Serial No.:	09/488,471	**Examiner:**	Hung Q. Pham
Filed:	01/20/2000	**Art Unit:**	2172

Board of Patent Appeals and Interferences
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450.

APPELLANT'S REPLY BRIEF TO EXAMINER'S ANSWER

Dear Sir:

This Reply Brief is submitted in response to the Examiner's Answer dated January 18, 2005.

ARGUMENTS

Appellant reasserts and incorporates all the arguments made in the Appeal Brief, and further addresses the Examiner's new arguments in response to Appellant's arguments.

Related Appeals and interferences

A related appeal that might affect or be directly affected by the present appeal is identified in the caption below:

Title: "System and Method for Integrating On-Line User Ratings of Businesses with Search Engines"
Appellant(s): SUNDARESAN, Neelakantan
Attorney Docket No.: AM9-99-0199
Serial No.: 09/488,470
Filing Date: 01/20/2000
Examiner: Hung Q. Pham
Art Unit: 2172

Issues on Appeal

The three issues/rejections currently on appeal are listed below:

1. Claims 1, 9, 17, and 25 stand rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

2. Claims 1-2, 6-10, 14-18, 22-26, and 30-32 stand rejected under 35 U.S.C. 103(a) as being unpatentable over BizRate.com

[http://web.archive.org/web/199812050829 10/http://www.bizrate.co m/] in view of Peters et al. [USP 5,893,098].

3. Claims 3-5, 11-13, 19-21, and 27-29 stand rejected under 35 U.S.C. 103(a) as being unpatentable over BizRate.com [http://web.archive.org/web/199812050829 10/http://www.bizrate.co m/] in view of Peters et al. [USP 5,893,098] and Appellant Admitted Prior Art [Background of the Invention, pages 1-3].

First Issue: Claim Rejections under 35 USC § 112, First Paragraph

(a) First Ground

In summary, claims 1, 9, 17, and 25 were rejected under 35 U.S.C. 112, first paragraph on the ground that "businesses that are selected from an unrestricted pool of merchants, and updated cumulative business satisfaction ratings from the users' ~~on-line~~ off-line surveys or feedback automatically cause the ~~on-line~~ off-line ranking system to re-index the rating data," were not described in the specification. Applicant has taken the liberty to correct the errors in this excerpt to better reflect the essence of the present invention, and to avoid confusion with the subject matter of the appeal proceeding of Application Serial No. 09/488,470, _supra_.

In response to Appellant's arguments in the Appeal Brief, the Examiner indicates that: "If WWW is an unrestricted pool of merchants, and business is part of this pool as argued by appellant. FIG. 1 and the content of page 9 (not 8), lines 6-7 still does not have the description of selecting businesses

from this unrestricted pool as claimed: <u>businesses that are selected</u> from an unrestricted pool of merchants."

Appellant respectfully submits that since the merchants are located on the Internet (or WWW), and absent a clear indication to the contrary, <u>it should be quite clear to person of ordinary skills in the art that these Internet businesses are part of an unrestricted pool of merchants</u>. In other terms, the Internet merchants are not restricted to a selected (or preselected) group of merchants.

In other terms, a person of ordinary skill in the art would certainly find fallacy in the Examiner's logic that the Internet merchants are not part of an unrestricted pool of merchants. <u>Such a logic would negate the very basis of the Internet's open architecture, and is erroneous</u>.

In addition, since the claims are interpreted in view of the specification and the problems addressed by the invention, it should be noted that the Background of the Invention section clearly refers to the WWW as a vast, network of businesses, governments, groups, and individuals. Contrary to the Examiner's assertion, and as described in the first paragraph of the Background of the Invention section, <u>the present invention does not limit the environment of the invention to a restricted pool of merchants</u>:

> "<u>The World Wide Web</u> (WWW) <u>is comprised of an **expansive network** of interconnected computers upon which businesses, governments, groups, and individuals **throughout the world**</u> maintain inter-linked computer files known as web pages. Users navigate these pages by means of computer software programs commonly known as Internet browsers. Due to the **<u>vast</u>** <u>number of WWW sites</u>, many web pages have a redundancy of information or share a strong likeness in either function or title. The **<u>vastness</u>** <u>of the unstructured WWW</u> causes users to rely

primarily on Internet search engines to retrieve information or to locate businesses. These search engines use various means to determine the relevance of a user-defined search to the information retrieved." Emphasis added.

In addition, <u>the Examiner's self-admitted statements</u> on pages 15, 16 of the Examiner's Answer, <u>the Examiner agrees that businesses doing business on the web **definitely** meet</u>: "the requirement of the claimed limitation: businesses that are selected from an unrestricted pool of merchants". The following is the relevant excerpt:

> "As disclosed by BizRate, a business can be selected by BizRate if that business sells products/services over the Web, has full on-line ordering capabilities, is not an adult or pornographic site, and agrees to be evaluated via survey by actual customer (BizRate, page 9). As seen, businesses from the web as an unrestricted pool of merchants are selected by BizRate based on predetermined criteria, and this technique definitely meets the requirement of the claimed limitation: businesses that are selected from an unrestricted pool of merchants."

(b) Second Ground

In addition, the Examiner indicates that: "without a full and clear disclosure of the invention in the manner prescribed by 35 U.S.C. 112, first paragraph, the obvious question is: how should it be understood that the indexing process of the rating data is a continuous, automatic process and the rating data are not indexed once and the process stops (which defeats the intent of the present invention)."

Appellant respectfully submits that the correct element that the Examiner is addressing reads as follows:

> "wherein updated cumulative business satisfaction ratings from the users' off-line surveys or feedback automatically cause the off-line ranking system to re-index the rating data, and further cause the result

sorter to generate ranked matches based on the re-indexed rating data."

What the Examiner seems to imply is that it would be logical to infer from the present application that the indexing process is not continuous, that is the data is indexed once and then the process stops. In other terms, when one user uses the system, the system would become obsolete.

Such an interpretation would be an overly broad interpretation (or misunderstanding) of the present invention. The patent application refers to making the ratings available to future users (Page 5, lines 8-11). As a result, the rating of businesses does not stop with a single user, but rather, each user utilizes process 300 of FIGS. 3A and 3B, and thus the ratings of each new user is based on the cumulative ratings of the new rating from the new user and the existing ratings from the previous users. "Eventually, businesses with higher ratings will be ranked at the top of the search list, while business with lower ratings will be ranked lower." Page 24, lines 1-13.

"In addition, **the business rating system 10 is a self-correcting system in that after a certain period of use, the users' interactive ratings could significantly affect the ranking of the businesses, and ultimately, lower ranked businesses stand lower chances of being browsed and thus selected**. For example, if a user selects a site that had an initially high ranking and was not satisfied with the business, that user gives a poor rating to the business. If a reasonable number of users give a similarly poor rating to the same business, the business site will automatically ranked lower." Page 15, line 15 - page 16, line 2.

To conclude, Claims 1, 9, 17, and 25 satisfy the requirement of 35 U.S.C. 112, first paragraph and are allowable.

Second and Third Issues: Claim Rejections under 35 USC § 103

(a) The Examiner indicates that: "Regarding the appellant's argument based on MPEP § 2143.03, the examiner respectfully traverses because all of the claimed limitations were taught by the prior art, and each of the terms of the claims were considered and matched."

Appellant respectfully submits that <u>the standard used by the Examiner is not in compliance with the legal requirements and authorities for the obviousness rejection</u>. In particular, it is not sufficient that that all the claimed limitations be matched with the prior art, but rather, **the invention must be considered as a whole** and not dissected in parts. Reference is made to MPEP 2141.02, and In re Hirao, 535 F.2d 67 at 69, 190 USPQ 15 at 17 (CCPA 1976).

(b) The Examiner also indicates that: "In response to appellant's argument that there is no suggestion to combine the references ... In this case, indexing technique is a conventional method to speed up the search and organize data, and BizRate is a search engine with a local database to support the search. Therefore, an index mechanism is a requirement for BizRate system in order to search and organize data."

Appellant incorporates by reference the arguments made in the Appeal brief, and further submits that <u>the Examiner</u> has selectively focused on the step of indexing and <u>has not addressed the remaining limitations of</u>

<u>the claims.</u> In other terms, the Examiner has selected the step of indexing, while ignoring the other steps associated with the step of indexing:

> "wherein the off-line ranking system <u>indexes the rating data;</u>
> a ranking repository for storing the rating data indexed by the off-line ranking system; ...
> wherein updated cumulative business satisfaction ratings from the users' off-line surveys or feedback automatically cause the off-line ranking system <u>to re-index the rating data, and further cause the result sorter to generate ranked matches based on the re-indexed rating data.</u>" Emphasis added.

Appellant maintains that while indexing has been known, it is <u>the combination of the above elements of claim 1, in view of the invention</u> **as a whole**, that is not disclosed or suggested by the references cited by the Examiner. <u>More particularly, BizRate does not describe re-indexing the rating data so that the result is ranked based on the re-indexed rating data.</u>

(c) The Examiner argues that: "Examiner respectfully traverses because the claimed, a self-correcting system could be distinguished over the prior art only by the special features of the system as in the body of the claim, not just only the term alone as bolded. BizRate.com is an online service website using a search engine to search name, URL or keyword (BizRate, page 1) and providing consumers with information of a product based on ranking data from customers (BizRate, pages 3-5), and BizRate is considered as **a self-correcting system for use with a search engine to rank search results based upon a ranking of businesses**. As disclosed by BizRate, a business can be selected by BizRate if that business sells products/services over the Web, has full on-line ordering capabilities, is not an adult or pornographic site, and agrees to be evaluated via survey by actual customer (BizRate, page 9). As seen, businesses from the web as an unrestricted pool of merchants are selected by BizRate based on

predetermined criteria, and this technique definitely meets the requirement of the claimed limitation: businesses that are selected from an unrestricted pool of merchants."

Furthermore, the same Examiner, Mr. Hung Q. Pham, agreed in the related appeal, _supra_, with Appellant that **BizRate does not allow ALL the businesses on the WWW to be rated.** This means that BizRate limits the selection of businesses, and thus the users in **BizRate do not access businesses from an unrestricted pool of merchants,** thus teaching away from the present invention.

Appellant does not profess to understand the Examiner's logic on how BizRate could concurrently limit its selection of merchants and at the same time provide a selection from an unrestricted pool of merchants. The key term here is "unrestricted" or "not restricted" by an intermediate company such as BizRate. It is the intention of the present invention to allow an open, unrestricted, unlimited ranking based on the ratings from the consumers and not from intermediate companies, such as BizRate. The limitation of BizRate teaches away from the present invention in that the present invention eliminates potentially biased sources, such as an intermediary company that limits the ratings to best suit its financial needs.

As described in the following excerpt from the present application, a main problem addressed by the present invention is to bypass intermediate companies, such as BizRate, and to allow the consumers themselves to establish an open, unlimited, unrestricted rating, in order to avoid biased ratings from the intermediate companies, by **directly correlating customers satisfaction to the ranking of businesses**:

"For consumers searching the WWW for businesses, the search methods employed by current search engines provide incomplete information for the users to assess the quality of the businesses ... For example, popularity, is a commonly used static criterion which is determined by the number of visits or queries of business sites, and which may depend on advertising, strategic business alliances, or creative naming of a site, and is therefore independent of customers satisfaction with the ranked businesses. Therefore, there is still an unsatisfied need for a system and method that integrate user provided interactive criteria, such as customers and on-line users' satisfaction, with search engine results." Page 3, lines 5-20, with emphasis added.

(d) The Examiner indicates that: "As argued by appellant on page 16, lines 3-14: The present system is automatic in that it does not require an intermediary company, such as BizRate, to select the merchants first and then take into account the customers' feedback ... Moreover, contrary to BizRate, the present invention opens up the entire pool of merchants all around the globe to being rated by users, whether these users are customers or not BizRate's survey of customers' opinions is limited to customers who made purchases ... Examiner respectfully points out that this argument does not relate to the claimed subject matter of claims 1, 9, 7 or 25, and therefore does not warrant consideration (i.e., the subject matter is not claimed)."

Appellant disagrees with the Examiner in that this feature is essential to the understanding and interpretation of the claims. This feature enables the Examiner to properly interpret the claims in view of the problems it addresses.

More specifically, considering claim 1, it recites the following limitation that has been apparently ignored or overlooked by the Examiner:

"wherein updated cumulative business satisfaction ratings from the users' off-line surveys or feedback automatically cause the off-line ranking system to re-index the rating data, and further cause the result sorter to generate ranked matches based on the re-indexed rating data."

Appellant attempted to explain the two important terms "automatically" and "unrestricted" that help understand the invention as a whole, and yet the Examiner completely disregarded such an explanation! As a result, Appellant respectfully requests the Board to interpret the present invention as a whole in view of these two terms.

(e) Appellant will try to respond, to the best of his understanding of the Examiner's arguments. The Examiner states the following:

> "BizRate fails to teach the step of indexing the rating data, storing the rating data indexed by the off-line ranking system, and updated cumulative business satisfaction rating from the users' on-line ranking system or feedback automatically cause the on-line ranking system to re-index the rating data, and further cause the result sorter to generate ranked matches based on the re-indexed rating data."

Appellant agrees with the Examiner, and respectfully submits that if BizRate does not disclose all these important elements of the invention, **BizRate does not and cannot capture the essence of the present invention as a whole.**

Appellant does not profess to limit the claimed invention to the well-known processes of indexing and rating. Rather, these steps need to be considered in combination with the other elements of claim 1, in order to enable a proper interpretation of the **invention as a whole**.

More specifically, the references cited by the Examiner, including BizRate, do not disclose the above elements, wherein the off-line ranking system generates rating data from the any of the users' off-line surveys or feedback, such that the rating data correlates higher quality search matches to higher business satisfaction ratings directly without third party interference (that is the businesses are selected from an unrestricted pool of merchants, i.e., an open, unrestricted, unlimited ranking based on the ratings from the consumers and not from intermediate companies). A profile manager creates a user profile history from a user's address such that the user profile history enables the user to update a rating that was previously provided by the user, not by other users. The updated cumulative business satisfaction ratings from the users' off-line surveys or feedback automatically cause the off-line ranking system to re-index the rating data, and further cause the result sorter to generate ranked matches based on the re-indexed rating data.

In other terms, it is important to emphasize that the invention as a whole, provides a direct correlation between business satisfaction ratings of businesses that are selected from an unrestricted pool of merchants (in an open, unrestricted, unlimited architecture, free from ratings by intermediate companies) to the ranked matches. Neither BizRate nor the other references cited by the Examiner, whether considered individually, or in combination with each other, teach this objective and the way to implement this objective.

(f) (g) Both sections (f) and (g) in the Examiner's Answer need to be combined as they relate to complementary arguments. Section (f) states in part that: "As argued by appellant on page 17, lines 6-10: Applicant

submits that BizRate does not disclose "a result sorter ... Examiner respectfully traverses because of the following reasons: As shown on pages 3-5 is the technique of sorting query results generated by the search engine, based on the rating data and for generating ranked matches, and the missing of indexing and storing step could be supported by Peters as discussed above."

Section (g) states in part that: "Examiner respectfully traverses, as disclosed by BizRate, every merchant listed in BizRate has been rated based on 10 dimensions of service, which includes, Price, Product Selection, Product Information... as rating data (BizRate, pages 8 and 13-14). As on pages 22-26. As shown in page 1 is an interface of BizRate for receiving a query, either by entering search criteria into the search box or browsing the Product Category, from consumers who are located at remote locations. Pages 3-5 is a result of the merchants under category Apparel > Accessories. By using Shopping Filters feature, a user could filter the list of merchants to only those that have the features and capabilities of the user. If only one aspect of shopping is particularly important to a user, a pull down menu could be used to have the merchants ranked according to the rating data on that dimension (BizRate, page 11). As seen in pages 3-5, by entering keywords into the search box, a remote user receives a result list of merchant as in pages 3-5. If the filter is disable, the rating data correlates SunglassSite.com as higher quality search match to an overall rating of 8.47 based on 0-10 numerical rating scale as higher business satisfaction rating."

The foregoing Examiner's rejection grounds are not clear, and therefore, for completeness purpose, Appellant has reproduced below the arguments previously presented in the Appeal Brief:

"Though Peters discloses the intake of surveys, it does not output sorted query results based on the "rating data". Applicant submits that "rating data" is clearly defined in the claims as rating data that correlates higher quality matches to higher business satisfaction rating. Thus, Peters does not disclose rating data as claimed herein, and therefore the combination of Peters and BizRate, is not permissible because neither reference provides a suggestion or teaching of the missing features.

If however, such combination were permissible, it would still not yield the system and method as claimed herein, in that the combination would still lack the following element: "wherein updated cumulative business satisfaction ratings from the users' on-line surveys or feedback automatically cause the on-line ranking system to re-index the rating data, and further cause the result sorter to generate ranked matches based on the re-indexed rating data."

In addition, Peters does not disclose the remaining elements that are missing from BizRate (as argued earlier).

(h) The Examiner indicates: "As argued by appellant at page 20 with respect to the Third Rejection Ground, examiner respectfully traverses because claims 3-5, 11-13, 19-21 and 27-29 are unpatentable for depending on the rejected claims 1, 9, 17 and 25."

For completeness purpose only, Appellant maintains his prior position that claims 3-5, 11-13, 19-21, and 27-29 are allowable for depending on the allowable independent claims 1, 9, 17, and 25, respectively.

(i) The Examiner indicates that: "Regarding the Fourth Rejection Ground, Claims 1, 9, 17, and 25 were amended to satisfy the requirement of 35

U.S.C § 112, second paragraph. However, appellant's arguments are not consistent with the amended feature; Namely: **off-line surveys and off-line ranking system**. Instead, appellant relies on the terms **on-line surveys and on-line ranking system** in attempting to distinguish over the prior arts of record, ie., page 8, 8.1 First Rejection Ground, and page 16, lines 20-21.

Appellant does not quite understand this argument. It is not clear whether or not the Examiner is maintaining this rejection, as the Examiner's Answer does not contain a clear rejection of the claims under 35 USC 112, second paragraph.

In addition, it is the Examiner himself who inadvertently argued on-line surveys instead of off-line surveys. In fact, at page 8 of the Appeal Brief, Appellant simply reproduced an excerpt from the Examiner's arguments.

Furthermore, the Examiner is still making the comparison to on-line surveys at page 5 of the Examiner's Answer. Nonetheless, Appellant appreciates that inadvertent typographical errors can be made by the Examiner as well as by Appellant, and has not accorded these errors an undue weight.

Appellant's error on page 16 of the Appeal Brief should have been clearly understood by the Examiner, particularly that all the remaining arguments clearly address off-line surveys.

To conclude, the rejected claims 1-32 are not obvious in view of the cited references, whether considered separately or in combination with each other.

Respectfully submitted,

Date: <u>March 11, 2005</u>
Samuel A. Kassatly Law Office
20690 View Oaks Way
San Jose, CA 95120
Tel.: (408) 323-5111
Fax: (408) 521-0111

Samuel A. Kassatly
Attorney for Appellant
Reg. No. 32,247